IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19283 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUPER MULTI COLOUR PRINTER PVT. LTD., & 1 - Petitioner(s)
Versus
BHARAT SANCHAR NIGAM LIMITED, - Respondent(s)

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Appearance :
MR SS PANESAR for Petitioner(s) : 1 - 2.
MR MA BUKHARI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 11/05/2007

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. The petitioners have preferred the present petition under Article 226 of the Constitution of India, wherein, a direction is sought against the respondent for quashing and setting aside

the impugned order passed below ex. 1 by Assistant General Manager (Marketing) O/O CGMT, Gujarat Circle, Ahmedabad.

2. The petitioner no. 1 is the company having its registered office at Chandigadh and petitioner no. 2 is the Marketing Manager of the petitioner no. 1 company. In response to tender floated by the respondent for printing and supply of 12 lakhs Excel Booklet Kit and 3 lakhs Cellone Booklet Kit for a period of 1 year, the petitioner no. 1 on 10th January, 2005 submitted their bid of Rs. 4700/- per 1000 Excel Booklet Kit and Rs. 7040/- per 1000 Cellone Booklet Kit along with NSIC certificate , which was opened on 10.1.2005. Though the bid of the petitioner no. 1 was lowest, the respondent vide letter 13.1.2005 requested the petitioner no. 1 to further negotiate the rates and accordingly considering the bulk quantity of the order, the petitioner no. 1 further reduced the rates viz. Rs. 4550/- per 1000 Excel Booklet Kit and Rs. 7000/- per 1000 Cellone Booklet Kit. Since the petitioner no. 1 is duly registered with the NSIC and hence exempted from payment of cost of tender document, earnest money deposit, security deposit etc. The petitioner no. 1 also sent a copy of the certificate issued by NSIC to the respondent. The above tender of the petitioner no. 1 was accepted by the respondent. Thereafter the respondent vide its letter dated 9.2.2005 informed the petitioner no. 1 to furnish detail information of tenders registered as NSIC unit and the petitioner no. 1 vide letter dated 9.2.2005 furnished the said information to the respondent. Hence, the respondent did not demand any security deposit by way of performance Bank guarantee from the petitioner no. 1 company and accordingly, the respondent

issued Advance Purchase Order (APO) dated 25.2.2005 for printing and supply of 12 lakhs Excel Welcome Booklet Kit @ Rs. 4550/- per 1000 Booklet and 3 lakhs Cellone Welcome Booklet Kit @ Rs. 7000/- per 1000 Booklet which was received by the petitioner no. 1 on 28.2.2005 and accepted vide letter dated 28.2.2005. In the said purchase order dated 25.2.2005 the respondent has clearly agreed that levy of performance bank guarantee is not applicable as the petitioner no. 1 is registered with NSIC under single point.

3. The respondent issued Purchased Order for printing and supply of 1 lakh Excel Booklet Kit but suo motu cancelled the same and issued revised purchased order dated 21.3.2005. However, due to delay on the part of the respondent in sending approval of quality and compliance as to specification of the booklet, the petitioner no. 1 dispatched 1 lakh Booklet to the respondent on 27.4.2005 and it reached Ahmedabad on 30.4.2005. It is submitted that officers of the respondent neglected to take the delivery of the said goods due to inter-se disputes between the department. After persuasion by the petitioner no. 1, the delivery of the goods was taken on 4.5.2005. Because of the delay on the part of the respondent, the petitioner no. 1 had to incur additional expenses of Rs. 10,000/-. The petitioner no. 1 sent the bill dated 18.5.2005 for Rs. 4,55,000/- to the respondent. Though the petitioner no. 1 did not furnish any Performance Bank Guarantee to the respondent, the respondent has wrongly shown performance Bank Guarantee of Rs. 3.30 lakh in the said Purchase Order. The copy of the purchase order dated 9.3.2005 and the revised purchase order dated 21.3.2005 along with the delivery Chalan is relied on by the petitioner in support of the

contentions raised in the petition. It is submitted that petitioner no. 1 raised the bill dated 18.5.2005 for Rs. 4,55,000/- but the respondent neglected to make the payment of the said bill. The petitioner no. 1 on 1.2.2006 received the letter dated 30.1.2006 from the respondent intending to place the order for the additional 1 lakh booklet amounting to Rs. 4,55000/- and demanded the performance bank guarantee of Rs. 45000/- before 5.2.2006 on the ground that the work done by the petitioner no. 1 has exceeded the exempted limit. The petitioner no. 1 gave reply dated 6.2.2006 to the respondent stating therein that since the petitioner no. 1 is registered with National Small Industries Corporation Limited (NSIC) as SSI Unit under Single Point Registration Scheme with monetary limit of 214 lakhs, the petitioner no. 1 is entitled to the exemption from payment of any performance bank guarantee up to Rs. 214 lakhs. The rates as per the submission of the petitioners was of earlier contract was valid for a period of one year from the letter of intent i.e. Advance Purchase Order dated 25.2.2005, hence the same expired on 24.2.2006.

4. In view of the aforesaid facts, the petitioner no. 1 company was not legally bound to perform said contract on the previous expired rates. The respondent without seeking prior approval for extention of the contract on the previous rates has suo motu sent Purchase Order No. 2 on 4.3.2006 to the petitioner for printing and supply of 5 lakh Excel Welcome Booklet Kits on previous contract rates which expired by efflux of time. Thus, the action of the respondent is bad in law and petitioner no. 1 has no legal obligation to perform the contract on the previous expired rates. It is

further submitted that respondent sent sanction advice dated 28.2.2006 against payment of bill dated 27.4.2005 qua Purchase Order No. 1 and in the said sanction advice, the respondent has suo motu deducted Rs. 11,375/- for the late delivery of the goods even though the let delivery was caused due to delay on the part of the respondent in approval of the goods. A further amount of Rs. 30,300/- was also deducted on account of the alleged difference in the size even though the respondent never pointed out to the petitioners any such irregularity in respect of the goods which was delivered in the past. The petitioners were further shocked to find that in the said sanction advice, the respondent had suo motu deducted Rs. 2,27,500/- against the procurement of Security Deposit even though the petitioner no. 1 being registered with NSIC as single point unit was exempted from giving any such PBG for an amount up to Rs. 214 lakhs. The aforesaid facts was brought to the knowledge of the department by the petitioner no. 1 vide letter dated 10.5.2005 and the same was confirmed by the department in its APO dated dated 25.5.2005 as well as letter dated 6.2.2006. Thus, the department as per the submission of the petitioners was not entitled to made deduction suo motu. The petitioners thereafter made the request to the respondent to look into the matter by letter dated 20.3.2006 and informed the Chairman and Managing Director of the respondent about harassment and corrupt practices of the department. The respondent by letter dated 21.3.2006 threatened to terminate the contract of the petitioners and black list the petitioner no. 1. The copy of the letter was also sent to the NSIC for investigation. The petitioner no. 1 thereafter requested to refer the matter to arbitration but the said request was not heeded by the

respondent. The respondent in the aforesaid connection issued the cheque bearing No. 311364 dated 14.3.2006 for Rs. 1,77,182/- to the petitioner no. 1 which was received by the petitioner no. 1 on 17.4.2006. It is submitted by the petitioners that though the NSIC New Delhi vide letter dated 24.4.2006 informed the Chief General Manager of the respondent to issue suitable instructions to the AGM (Marketing-II) to release the amount of Rs. 2,27,500/- to the petitioner no. 1, the respondent has not released the said amount till today. Hence, the petitioner is constrained to file the present petition on the ground that the order passed by respondent black listing the petitioner no. 1 without considering the reply dated 5.4.2006 as arbitrarily and deserves to be quashed and set aside. It is further submitted that no opportunity of hearing was given to the petitioners before blacklisting the petitioner no. 1 company. The request of the petitioners to refer the disputes to the arbitration in terms of the contract ought to have been acceded to by the respondent, but instead of referring the matter for arbitration to resolve the dispute, the petitioner no. 1 was black listed which is against the terms and conditions of the contract. It is submitted that as the petitioner no. 1was duly registered with NSIC and fully exempted from payment of any performance guarantee which was accepted by the respondent at the time of acceptance of the tender and issuing advance purchase order dated 25.2.2006 suo motu deduction of the amount to the tune of Rs. 2,27,500/- made by respondent on 28.2.2006 i.e. After expiry of the previous contract on 25.2.2006 by way of the alleged performance guarantee is dehors the provisions of the terms and conditions of the contract. Thus, learned advocate submitted that on the basis of the averments made in

the petition and the documents which are annexed along with the petition, the order passed by the respondent authority at Annexure-A, whereby, the petitioner no. 1 was black listed requires to be quashed and set aside and the amount of Rs. 2,27,500/- which were deducted by the respondent on 28.2.2006 even after the expiry of the previous contract on 25.2.2006 requires to be refunded to the petitioner no. 1.

5. As against the aforesaid submissions, the respondent has filed detailed affidavit in reply vide ex. 66 contending inter alia, that petitioner was given full opportunity after the issuance of show-cause notice and all care was taken to see that principles of natural justice were not violated before passing the impugned order at Annexure-A to the petition. It is stated by the respondent that the order of black listing the petitioner no. 1 for a period of one year within the State of Gujarat was perfectly in accordance with the terms and conditions of the contract and no illegality was committed by the respondent in black listing the petitioner no. 1. It is contended by the learned advocate that respondent had adhered to the guidelines and instructions contained in Department of Telecommunication, New Delhi Circular bearing No. F 3-2/99-MMT dated 4.5.1999 which specifies that the monetary limits of such of the SSI Units would be limited to Rs. 50 lakhs only. The work of printing welcome Booklet Kit of Cellular Service was to the extent of 15 lakhs and the amount involved was Rs. 75,60,000/-. Thus, it was necessary to apply the limit as laid down in the DOT Circular referred to in the affidavit-in-reply. It is further submitted that the book-let supplied were not exactly as per the specifications laid down by the purchase order. The outer

cover pasting of the booklet was not in place which required repasting of same for a large number of booklets. Considering the aforesaid deficiency, the request was made to rectify the mistake, but since the same was not considered by the petitioner, the respondent was constrained to put the petitioner in the black list as per the order Annexure-A to the petition.

6. It is further submitted with regard to the recovery of Rs. 2,27,500/-, the respondent has taken a decision to recover the security deposit against issue of repeat order dated 5.3.2006 for the supply of the 5 lakhs booklets. As the petitioner no. 1 could not provide respondent the details pertaining to the work orders or the orders executed by it in various circle and units of BSNL, the recovery was made. It is submitted that because of the poor performance of the petitioner no. 1 in execution of the first purchase order itself, the respondent has suffered irreparable loss and, therefore, the recovery of the deduction made from the final payment due to the petitioner no. 1 was perfectly justified. Learned advocate for the respondent submitted that as the petitioner has not made out a case for the grant of relief as prayed for in the petition, the petition is liable to be dismissed.

7. After having heard learned advocate Mr. SS Panesar for the petitioners and Mr. MA Bukhari learned advocate for the respondent and on perusal of the averments made in the petition as well as affidavit in reply and the documents produced along with the petition and reply, the petitioner no. 1 in response to the tender floated by the respondent for printing and supply of 12 lakhs Excel Booklet Kit and 3 lakhs

Cellone Booklet Kit for a period of 1 year, submitted the bid of Rs. 4700/- per 1000 Excel Booklet Kit and Rs. 7040/- per 1000 Cellone Booklet Kit along with NSIC certificate. The bid was opened on 10.1.2005. Though the bid of the petitioner no. 1 was lowest, respondent vide letter dated 13.1.2005 requested the petitioner no. 1 to further negotiate the rates and accordingly, consider the bulk quantity of the order, petitioner no. 1 further reduced the rates viz. Rs. 4550/- per 1000 Excel Booklet Kit and Rs. 7000/- per 1000 Cellone Booklet Kit. The tender of the petitioner no. 1 was accepted. Thereafter, the respondent vide letter dated 9.2.2005 informed the petitioner no. 1 to furnish detailed information of tenders registered as NSIC units and the petitioner no. 1 furnished the said information to the respondent. In view of the aforesaid facts, no security deposit was demanded by the respondent by way of performance bank guarantee. The purchase order was issued by the respondent on 25.2.2005 for printing and supply of 12 lakhs Excel Welcome Booklet kit for Rs. 4550/- for 1000 booklet and 3 lakhs Cellone Welcome Booklet Kit @ Rs. 7000/- for 1000 booklets. Thereafter, on 9.3.2005, respondent suo motu cancelled the printing and supply order issued on earlier occasion and revised purchased order came to be issued on 21.3.2005. However, due to the delay on the part of the respondent in sending approval of quality and compliance as to specification of the booklet, the petitioner no. 1 dispatched 1 lakh Booklet to the respondent on 27.4.2005, however, the respondent neglected to take the delivery of the said goods due to inter-se dispute between the department, with the result thereof, the delivery was taken on 4.5.2005. The petitioner no. 1 though raised the bill of Rs. 4,55,000/- on 8.5.2005 the respondent neglected to make the full payment

of the said bill. Even respondent suo motu deducted Rs. 11,375/- for the late delivery of the goods and Rs. 30,300/- on account of alleged difference in the size of the goods. The respondent also deducted Rs. 2,27,500/- against the procurement of security deposit even though the petitioner no. 1 was registered with NSIC as a single unit and exempted from giving any such performance bank guarantee for the amount of Rs. 214 lakhs. Even that fact was brought to the knowledge of the department by the petitioner no. 1 vide its letter dated 25.5.2005 as well as 6.2.2006. The petitioner, even requested to resolve the dispute by referring the same for arbitration but the request of the petitioner was not heeded. On perusal of the documents which are produced in the present case, the petitioner no. 1 was initially awarded the purchase order and it was subsequently revised by the respondent. The delay was caused in supplying the goods by the petitioner no. 1 to the respondent. The respondent saddled the petitioner no. 1 with the costs of Rs. 11,375/- as well as Rs. 30,300/- and subsequently, even the amount of Rs. 2,27,500/- were forfeited by the respondent. The petitioner no. 1 was black listed and that fact is reflected in the order at Annexure-A to the petition. Thus, though there was delay on the part of the respondent as well to accept the goods prepared by the petitioner no. 1, the petitioner no. 1 was saddled with the costs and due to unilateral action of the respondent, as aforesaid, the petitioner no. 1 was black listed by the respondent. The petitioner no. 1 was even exempted by NSIC and not supposed to pay the performance bank guarantee up to the monetary limits of Rs. 214 lakhs. Thus, the petitioner no. 1, in our considered view, cannot be saddled with the liability of security deposit of Rs. 2,27,500/-.

The contract which was entered into by the respondent with the petitioner and the cancellation of the same is produced vide Annexure-A to the petition, wherein, it has been mentioned that the petitioner had failed to supply the material ordered by the respondent and the petitioner had committed breach of the terms and conditions as per clause – 3-C of Sec. IV. In view of the breach of the conditions, the contract was terminated and the security deposit was forfeited with immediate effect. It is further observed in the order at Annexure-A that the petitioner is debarred from participating in any future tender or tenders presently in process in entire Gujarat Circle for a period of one year from the date of issue of the order. This order was apparently passed without affording an opportunity of hearing to the petitioner. The order passed below ex. 1, whereby the petitioner no. 1 was black listed, in our considered view, requires to be quashed and set aside.

8. In view of the foregoing discussion, this petition is allowed. The order passed below Ex. 1 black listing the petitioners for a period of one year is hereby quashed and set aside. The respondent is further directed to refund the security deposit to the petitioners forfeited by it to the tune of Rs. 2,27,500/-.

(M.S. SHAH, J.)

(H.B. ANTANI, J.)

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